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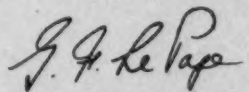
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OCTOBER—NOVEMBER 1958

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Continuous statutory representation for the client. The handling of each process served exactly the way the attorney has directed it to be handled. Complete information about every state tax and every state tax report the corporation may have to comply with—sent at just the time action on it should be started. The State Tax Reporter; a complete, up-to-the-minute, loose-leaf compilation of state laws, rulings, regulations and court decisions. A continent-wide system of offices and representatives set up to watch for and report any information which would affect a corporation's right to do business in the state.

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COLORADO

New Colorado Corporation Act

A NEW Colorado Corporation law, to be known as the "Colorado Corporation Act," has been enacted by Senate Bill No. 14, now Chapter 32, Laws of 1958. Approved March 6, 1958, it becomes effective January 1, 1959, with provisions applicable to both domestic and foreign corporations. This new law is patterned largely after the Model Business Corporation Act (Revised), drafted by the Committee on Business Corporations of the American Bar Association.

Among the provisions in the new law which have no counterpart in the present corporation law, which will be superseded by the new law on January 1, are provisions relating to the removal of directors, quorum of directors, issuance of share dividends, facsimile signatures on stock certificates, sources of dividends, dissolution by incorporators, dissolution by unanimous written consent of shareholders and parent and subsidiary mergers. The new law also eliminates the county filings required under the present law upon incorporation and in case of amendment of charter and dissolution and merger of domestic corporations.

The new act provides that all domestic and foreign corporations must maintain a registered office and agent and that the agent may be an individual or a domestic or a foreign corporation. This is in contrast with the present requirements, under which foreign corporations appoint an agent, while domestic corporations need appoint an agent only if they carry on any business or maintain books outside of Colorado. The agent appointed under the

present law may be either an individual or a domestic corporation.

The Secretary of State of Colorado has determined that all existing corporations, both domestic and foreign, will be required to file a designation of the registered office and registered agent, as required by the new law, on or before January 1, 1959. Foreign corporations which designate the same agent and address, as set forth in the most recent certificate of business and agent on file, will not be required to pay a filing fee for this designation. If either the name of the agent or the address is changed, a \$5 filing fee will be assessed. All domestic corporations will be required to pay the \$5 filing fee.

The new law repeals the present requirements for the filing of the Annual Report and for the payment of the Annual License Tax, which have been due on or before May 1. In lieu thereof, beginning in 1959, an Annual Report and the payment of an Annual Franchise Tax will be due between January 1 and May 1. A filing fee of \$5 is provided in connection with the Annual Report. The rate of the Annual Franchise Tax is as follows:

Authorized Capital Stock	Tax
Less than \$ 50,000	\$ 10
\$ 50,000— 100,000	20
100,000— 250,000	40
250,000— 500,000	65
500,000—1,000,000	100
1,000,000 or more	250

No par stock is to be valued at \$1 per share.

The new Annual Report will call for, among other things, a statement, ex-

pressed in dollars, of the amount of stated capital of the corporation. "Stated capital" is defined as:

"The sum of (1) the par value of all shares of the corporation having a par value that have been issued, (2) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and (3) such

amounts not included in clauses (1) and (2) of this paragraph as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation."



domestic corporations

DELAWARE

Appointment of receiver under statute providing for such appointment where there has been failure to elect directors for two successive annual elections held within discretion of court.

Plaintiffs, two sisters, each owned 25% of the stock of defendant corporation, and their brother owned the other 50%. Plaintiffs brought this action to obtain the appointment of a receiver for the defendant corporation under circumstances where, for the last four annual meetings there had been a failure to elect directors because of an evenly divided vote of the stockholders. The pertinent statutory provision, 8 Del. C., Sec. 226, provides that whenever, by reason of an equally divided vote of the stockholders, there is a failure to elect directors for two successive annual elections, the Court of Chancery, on application of any stockholder, may appoint a receiver.

The Court of Chancery, New Castle County, remarked that the use of the permissive "may" rather than the mandatory "shall" in the statute indicates

that such an appointment is within the discretion of the court, and observed that the drastic remedy of receivership was not called for where there was "not the slightest challenge to the efficiency of the management and no suggestion that it is deliberately being operated so as to solely benefit the stockholder in control." Subject to the defendant corporation's compliance with certain conditions, its motion to dismiss was granted.

Paulman et al. v. Kritzer Radiant Coils, Inc., Court of Chancery, New Castle County, June 26, 1958. Stewart Lynch of Hastings, Lynch & Taylor, for plaintiffs. Robert H. Richards, Jr., of Richards, Layton & Finger, for defendant. (This decision was followed in *Hall et al. v. John S. Isaacs & Sons Farms, Inc. et al.*, Court of Chancery, New Castle County, August 28, 1958.)

Plaintiff preferred stockholders ruled to have no cause of action for preferential payments where there was compliance with charter provisions for sale of substantially all corporate assets.

The charter of plaintiffs' corporation contained a provision that "neither a consolidation nor merger of the corporation with or into any other corporation or corporations, nor the sale of all or substantially all of the assets of the corporation shall be deemed to be a liquidation, dissolution or winding-up within the meaning of this clause." The clause was concerned with liquidation, dissolution or winding-up of the corporation, whether voluntary or involuntary, and under it the preferred stock was entitled, before any distribution to the common stock, to be paid the full preferential amount or amounts fixed by the board. There had been preferred stock approval, as required by the charter, for a sale

which had been effected of all or substantially all corporate property or business. The Court of Chancery, New Castle County, concluded there was no genuine issue of fact insofar as plaintiffs' claim to preferential payments on dissolution was concerned, and gave summary judgment of dismissal as to plaintiffs' cause of action in this connection.

Treves et al. v. Menzies et al., Court of Chancery, New Castle County, June 11, 1958. Irving Morris of Wilmington and Gallop, Climenko and Gould and Wolf, Popper, Ross, Wolf and Jones of New York, N. Y., for plaintiffs. Aaron Finger of Wilmington and Brown, Wood, Fuller, Caldwell and Ivey of New York, N. Y., for defendant, Servel, Inc.

Where stock was effectively sequestered, court indicated that sequestration was preserved although subsequent merger converted stock into that of another corporation.

Plaintiff, a stockholder in defendant Delaware corporation, brought this action against the defendant corporation and certain non-resident individual defendants. Stock of the defendant Delaware corporation owned by some individual defendants was seized by court order. These defendants moved to dismiss the complaint and vacate the sequestration on the ground that, by the defendant corporation's subsequent merger with a New Jersey corporation, resulting in its stock being converted into shares of the New Jersey corporation, the sequestration had been terminated.

The Court of Chancery for New Castle County, in refusing to vacate and dismiss,

indicated that when the defendant corporation converted the seized stock into stock of the New Jersey corporation under the terms of the merger, it did so subject to the effective seizure, and that the right became appended to the equivalent shares of the New Jersey corporation.

Cannon v. Union Chemical & Materials Corp. et al., 144 A. 2d 142. Howard L. Williams and William F. Lynch, II, of Morris, James, Hitchens & Williams, for plaintiff. Richard F. Corroon of Berl, Potter & Anderson for the moving defendants.

NEW JERSEY

Summary judgment for penalty against corporate officers who delayed in filing, after request, certificate of paid-in capital, reversed and cause remanded, where defendants were found not guilty of neglect or refusal to file certificate.

In *Sylvania Electric Products, Inc. v. Fulmer et al.*, 136 A. 2d 51, (The Corporation Journal, April—May, 1958, page 84), the Superior Court of New Jersey, Chancery Division, held that the president of a New Jersey corporation who failed, after request by a corporate creditor, to file a certificate of paid-in capital as called for in N.J.S.A. 14:8-16, was personally liable for a corporate debt.

In a more recent decision, a higher court, the Supreme Court of New Jersey, reversed a summary judgment obtained by a creditor against the president and the secretary of a New Jersey corporation whose tardiness in filing the report, after demand, had formed the basis for the motion for summary judgment in the trial court, to which the action was re-

manded by the Supreme Court. Stressing that the statute in effect imposed a penalty, the court, after an examination of the surrounding circumstances, felt it could not "be said as a matter of law that defendants were guilty of a neglect or refusal to file the certificate. The facts present such ample inferences to the contrary that a conclusion of error in granting summary judgment is inescapable."

Frank Rizzo, Inc. v. Alatsas et al., 142 A. 2d 861. Hymen B. Mintz, of Newark, argued the cause for defendants-appellants (Sol Herships, of Newark, attorney). Howard G. Kulp, Jr., of Camden, argued the cause for plaintiff-appellee (Brown, Connery, Kulp & Wille, of Camden, attorneys).



foreign corporations

CALIFORNIA

Service of process upheld where made on company soliciting sales over many years, during which executives and representatives exhibited, demonstrated and repaired its manufactured product locally.

The California District Court of Appeal, Second District, has upheld service of process where made upon an unlicensed foreign corporation under the following circumstances: The company's solicitation

of sales in California, representing approximately one-twelfth of its total sales, has been extensive, regular and continuous over a period of many years. There were also repeated appearances in California by

its executives and representatives for the purpose of exhibiting, demonstrating and repairing its manufactured product.

Gordon Armstrong Company, Inc. v. Superior Court of Los Angeles County,* 325 P. 2d 21. Jarrett & Morgan, for petitioner. Harold W. Kennedy, County Counsel; William E. Lamoreaux, As-

sistant County Counsel, for respondent. Raoul D. Magana, Richard J. Collins, Daniel C. Olney and Victor E. Kaplan, for real parties in interest.

* Excerpts from this opinion are printed in the *State Tax Reporter*, California, page 13,322.

DISTRICT OF COLUMBIA

Right of unlicensed corporation, doing business, to maintain suit, is suspended until qualification is effected.

Sec. 29-934f, District of Columbia Code, contains a provision that "no foreign corporation which is subject to the provisions of this chapter and which transacts business in the District without a certificate of authority shall be permitted to maintain an action at law or in equity in any court of the District until such corporation shall have obtained a certificate of authority." In applying this provision, the United States District Court for the District of Columbia posed the question whether this provision "is absolutely prohibitive or merely suspensory until compliance."

Denying a motion to dismiss the complaint, the court observed: "It is to be noted further that the statute does not say

that an action shall not be *begun* nor that the court shall not receive or entertain it, but only that it shall not be maintained—and there is a difference—until the corporation shall have complied with the law. It would seem, therefore, that non-compliance is a mere temporary disability and, therefore, capable of obviation at any state of the proceedings."

Hill-Lanham, Inc. v. Lightview Development Corp.,* United States District Court for the District of Columbia, January 31, 1957.

* The full text of this opinion is printed in the *State Tax Reporter*, District of Columbia, page 326.

KENTUCKY

Television broadcast from out-of-state station in fulfillment of advertising contracts with Kentucky residents, ruled sufficient to uphold service of process upon state official as the statutory agent of an unlicensed company.

A question raised was whether broadcasting by appellant foreign corporation from its television station located outside Kentucky but sent into Kentucky by appellant in accordance with and in fulfillment of contracts for advertising

within Kentucky, constituted doing business so as to secure jurisdiction over the company, not licensed in Kentucky, through service upon the Secretary of State of Kentucky under the provisions of KRS Sections 271.385 and 271.610.

The United States Court of Appeals, Sixth Circuit, affirmed a judgment overruling a motion to vacate and quash summons and to dismiss the action.

WSAZ, Inc. v. Lyons et al.,* 254 F. 2d 242. Selden S. McNeer and Luther E. Woods of Campbell, McNeer &

Woods, of Huntington, W. Va. W. H. Dysard & E. Poe Harris, of Ashland, Kentucky.

* The full text of this opinion is printed in the *State Tax Reporter*, Kentucky, page 10,126.

NEW YORK

Foreign corporation ruled not subject to process by reason of listing its stock on a local stock exchange, having a stock transfer agent locally or negotiating local sale of its convertible notes.

Defendant Canadian corporation appeared specially by attorney and moved for an order setting aside the service of summons upon the ground that it was a foreign corporation and not subject to the jurisdiction of the State of New York. The company maintained no office in New York and had no property there, nor did it have there a bank account or a warehouse, salesmen or other agents in the state. In spite of the absence of any normal indicia of jurisdiction, plaintiffs claimed the defendant company was "doing business" because its stock happened to be listed on the American Stock Exchange and because the company had a stock transfer agent located in New York

City and had, in 1956 succeeded in negotiations which had been undertaken in New York for the private placement or sale of certain convertible notes in the sum of \$3,000,000.

The New York Supreme Court, Special Term, New York County, Part I, concluded that such activities did not render the defendant amenable to process because of its alleged "presence" in the state.

Robbins et al. v. Ring et al., 166 N. Y. S. 2d 483. Gettinger & Gettinger of New York City, for plaintiffs. Dunnington, Bortholow & Miller (Frank A. F. Severance, of counsel), of New York City, appearing specially for Gridoil Freehold Leases.

Unlicensed foreign corporation selling product to wholly owned subsidiary on commission ruled not to be doing business so as to be subject to the service of process.

Defendant unlicensed foreign corporation appeared specially in a stockholders' derivative suit and moved to vacate and set aside service of process upon it, one of the grounds being that it was not in fact doing business in New York. The Supreme Court, Special Term, New York County, Part I, remarked that the resolution of the motion rested upon the determination of whether the defendant was doing business in the state.

Defendant did business with a New York wholly owned subsidiary which purchased defendant's products on commission but did not sell them on behalf of defendant or act as its agent. Defendant contended the relationship was that of supplier and distributor, with each corporation having its own rights and responsibilities. Defendant had no office or telephone listing in New York, although two of its officers, residing in New York,

were also officers of the subsidiary. The court concluded that the history of the two corporations, together with a consideration of the factors involved, required it to rule that the defendant was not doing business in New York so as to confer jurisdiction for the purpose of service of process.

Delaware corporation listed in New York telephone directory and carrying on systematic and continuous activities in state held amenable to service of process.

This was an action for breach of a written agreement for the sale and delivery of two boiler units by defendants to the plaintiff, and for breach of warranties in such agreement. The jurisdiction of the United States District Court, Southern District of New York, was based on diversity of citizenship. One of the defendants, a Delaware corporation, moved to quash service of process and dismiss on the ground, among others, that it was not present in or amenable to service of process in that district.

The court, after determining that the defendant Delaware corporation had a corporate existence separate from its parent, held that the activities which it carried on in New York plainly made it present for the purposes of service. Defendant was listed in the telephone directory, carried on business through

Blau v. Martin et al., 167 N. Y. S. 2d 662. Morris J. Levy of New York City, for plaintiff. Simpson, Thacher & Bartlett (Burton M. Abrams; Robert D. Milne, of counsel), of New York City, for defendant Bates Mfg. Co.

its representatives which was systematic and continuous, and the obligation which was the subject matter of the suit arose out of these very activities. "There is no question but that this defendant had sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the enforcement in this forum of the obligation which defendant incurred here."

Kamen Soap Products Co. v. Struthers Wells Corp., 159 F. Supp. 706. David Ray Bernstein of New York City, for plaintiff. Richard W. Smith of New York City, Isaac J. Silin, V. H. Elderkin, Jr. of Erie, Pa., for defendants. Donovan, Leisure, Newton & Irvine, Robert M. Loeffler of New York City, Warren Bentz of Erie, Pa., of counsel.

Service set aside where made at defendant's display at four-day exposition, where orders were taken.

Defendant Ohio corporation moved to vacate summons served upon it on the ground that it was not doing business in New York. Service was made upon the sales manager of the Plastic Machinery Division of the defendant while he was present at a display set up by the defendant at a four-day plastics exposition at the Coliseum in New York City. The defendant maintained no place of business in the State of New York. Two telephone listings gave a New Jersey address. A telephone was maintained at the Coliseum during the four-day exposition.

There were four officers of the defendant present and there were other employees who were available to take orders.

In granting the motion to vacate the summons, the New York Supreme Court, Kings County, concluded that there was nothing before the court which indicated that the defendant's business in New York was other than casual or occasional.

Molina v. The Hydraulic Press Manufacturing Company, 167 N. Y. S. 2d 280. John Russell O'Reilly of New York City for plaintiff. Marvin, Koch & Montfort of Mineola, for defendant.

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TEXAS

Service of process upon defendant corporation upheld where made upon a manufacturers' agent, a domestic corporation, acting for it.

Service upon defendant New Jersey corporation was effected by serving process upon a Texas corporation, a manufacturers' agent or representative for the New Jersey company and eight other companies, whose products did not compete with each other or the defendant company. A question concerned whether process could be so served and be upheld.

The United States Court of Appeals, Fifth Circuit, quoted Article 2031 of the Revised Civil Statutes of Texas, under which service upon a foreign corporation could be effected by serving, among other corporate agents, "upon any local or

traveling agent or travel-salesman of such corporation," and cited decisions to the effect that a corporation can be an agent for service. The court concluded that process in this instance was to be upheld where made upon defendant's manufacturers' agent or representative.

Acme Engineers, Inc. v. Foster Engineering Company, 254 F. 2d 259. Howard S. Hoover and Carroll R. Graham of Houston, for appellant. Alvin M. Owsley, Jr., Baker, Botts, Andrews & Shepherd, of counsel, of Houston, for appellee.

UTAH

Corporation furthering transactions which were part of and incidental to interstate commerce, ruled not doing business sufficiently to void its contracts.

Plaintiffs were holders in due course of trade acceptances given for property purchased from a corporation not licensed to do business in Utah. Defendants contended the trade acceptances were void under a statute voiding transactions made on behalf of an unlicensed corporation doing business in the state. The corporation had twenty-two contracts with Utah dealers under which title to products purchased by them was to pass to the dealer upon delivery to an interstate carrier at the place of shipment, Chicago, Illinois.

In permitting suit to be maintained, the Supreme Court of Utah remarked: "We are inclined to the view that entering into a series of contracts within the state which require certain local acts to be performed in the state, which acts are not merely incidental to the interstate

character of the transaction but are separate and distinct therefrom would constitute doing business within the state even though the contracting party breached the contract and failed to perform the acts within the state as agreed. However, in the instant cases it appears to us that the acts to be performed by Carbozite within the state were a part of and incidental to the entire interstate character of the contract."

East Coast Discount Corporation v. Reynolds,* 325 P. 2d 853. White, Arnovitz & Smith of Salt Lake City, for appellants. Benjamin Spence of Salt Lake City, for respondents.

* The full text of this opinion is printed in the *State Tax Reporter*, Utah, page 356.

WISCONSIN

**Foreign corporation maintaining and using an office
in Wisconsin for more than the facilitation of sales
held amenable to service of process in that state.**

Plaintiff, a Wisconsin corporation, was engaged in the business of selling to railroads sander equipment, valves, etc., which it purchased from defendant foreign corporation. Plaintiff commenced this action by service on the president of defendant Sales Corporation as an individual, in his capacity as president, and also as agent for another defendant. The Wisconsin statute provided that if a foreign corporation was doing business in Wisconsin at the time of service, or if the cause against it arose out of the doing of business in Wisconsin, service could be effected on any officer, director, or managing agent of the corporation. From an order denying a motion to set aside the service insofar as it purported to confer jurisdiction over the Sales Corporation, defendants appealed to the Wisconsin Supreme Court.

The defendant Sales Corporation's president resided in Milwaukee, where he leased offices in the Sales Corporation's name for a three-year period with option to renew. Office furniture and equipment was moved in, and the space was occupied and used by him and his secretary. Two telephone lines and four business listings were maintained and used at this office by the Sales Corporation. An advertisement

was published directing inquiries regarding defendant's products to this address and telephone number.

In answering affirmatively the question whether, at the time of the service, the corporation was doing business in Wisconsin, the court stated that, although the maintenance of an office for the facilitation of sales would not, of itself, render the corporation amenable to service of process, very little more was needed. The activities of the Sales Corporation constituted at least the "very little more" required, and the fact that the corporation did little business the court considered of no concern. The order denying the motion to set aside the service was affirmed.

Prime Mfg. Co. v. Kelly et al.,* 87 N. W. 2d 788. Quarles, Herriott & Clemons, Maxwell H. Herriott and Laurence C. Hammond, Jr., of counsel, of Milwaukee, for appellants. Michael, Spohn, Best & Friedrich, Herman E. Friedrich and John K. MacIver, of counsel, of Milwaukee, for respondent.

* The full text of this opinion is printed in the *State Tax Reporter*, Wisconsin, page 11,638.

**Company leasing equipment to operators of shows,
furnishing mechanic to run equipment, ruled not do-
ing business so as to be subject to process.**

Defendant New York corporation, moving to dismiss the complaint, having its home office in New York, was engaged in the business of operating water fountain assemblies in entertainment shows throughout the United States. It had

no shows of its own, but leased its equipment to entertainment shows owned and produced by others, including the plaintiff, under contracts made outside Wisconsin. The leased equipment, shipped disassembled by defendant, was

assembled upon arrival under the supervision of an employee of defendant, a mechanic, who continued to operate the equipment for the show. This employee was never an officer, director, agent or executive of the defendant and had no authority to accept service of summons and complaint in this action for the defendant, whose activities in Wisconsin had been infrequent, sporadic and temporary.

The United States District Court, Western District of Wisconsin, ordered the complaint dismissed, concluding that

defendant was not doing business in the state and had no agent there authorized to accept service of process for it.

Holiday on Ice Shows, Inc. v. Dancing Waters, Inc.,* 155 F. Supp. 763. La-Follette, Sinykin & Doyle of Madison and Harold D. Field, Jr., of Minneapolis, for the plaintiff. Maurice B. Pasch of Madison and I. Irving Silverman of Chicago, Illinois, for the defendant.

* The full text of this opinion is printed in the **State Tax Reporter**, Wisconsin, page 11,637.



taxation

KENTUCKY

On-the-spot sales made in Indiana from trucks operating out of Kentucky corporation's Louisville plant held allocable to Kentucky for purposes of that state's income tax.

This appeal involves the question of whether income derived by a Kentucky corporation from "on-the-spot" sales made in Indiana was allocable to Kentucky for the purpose of income taxes. The Circuit Court, Franklin County, voided the assessments and the Commissioner and others took this appeal to the Kentucky Court of Appeals. The controlling statute, K. R. S. 141.120(4)(f), provides that "Receipts from sales and other sources shall be assigned only to the office, agency or place of business of the corporation at which the transactions giving rise to the receipts are chiefly negotiated."

The corporation had its manufacturing plant in Louisville and sold its product in Kentucky and Indiana. Certain of its

drivers made deliveries only in Indiana, returning at night to Louisville with empty bottles and any unsold merchandise. The transactions in dispute were those effectuated by these drivers as "on-the-spot" sales, the orders being given and deliveries made at the time of the sale. Such transactions were not subject to approval at the corporation's Louisville office, but were final when completed.

In holding that these sales must be allocated to Kentucky for the purposes of determining the corporation's gross income subject to income tax in that state, the court stated that the legislature intended that "the locus of the sale is made dependent upon the site of the office, agency or place of busi-

ness out of which the salesman works." The court declared that to hold that each of the corporation's trucks was a sales office was to give the statute an unrealistic interpretation, and that the terms "office", "agency" and "place of business" imply definiteness of position. The judgment voiding the assessments was reversed.

J. E. Luckett, Commissioner of Revenue, et al., v. Coca-Cola Bottling Co. of

Louisville,* 310 S. W. 2d 795. Jo M. Ferguson, Atty. Gen., Hal O. Williams, Asst. Atty. Gen., William S. Riley, Atty., Dept. of Revenue, Frankfort, for appellants. William A. Mackenzie, Skaggs, Hays & Fahey, Louisville, for appellee.

* The full text of this opinion is printed in the **State Tax Reporter**, Kentucky, page 10,121.

Intangibles which had acquired "business situs" in another state, and for which state of incorporation afforded no protection, held not subject to ad valorem tax imposed by state of incorporation.

This was a proceeding to determine, among other issues, whether Kentucky could constitutionally levy an ad valorem tax upon the accounts and notes receivable and bank deposits of a Kentucky corporation, where these intangibles had acquired a "business situs" in other states. From an adverse judgment, the corporation appealed to the Court of Appeals of Kentucky. Appellant had its home office in Louisville, Kentucky, and was engaged in marketing petroleum products in Kentucky and four other states. The products to be sold in these other states were never in Kentucky, separate books were kept in each state, collections were made in each state and deposited locally, and all expenses were met from these local accounts. At periodic intervals, any balance was sent to the home office in Louisville.

The Court of Appeals held that, although the tax situs of intangibles is ordinarily the domicile of their owner, these intangibles had acquired a business and tax situs in each of the four other states, and Kentucky afforded no protection to the property. Therefore, the due process clause of the Fourteenth Amendment to the Federal Constitution precluded the imposition of a direct property tax on these intangibles by Kentucky.

Standard Oil Company v. Commonwealth, 311 S. W. 2d 372. Charles G. Middleton, Louis Seelbach, Leo F. Wolford, Edwin G. Middleton, Middleton, Seelbach, Wolford, Willis & Cochran of Louisville, for appellant. William S. Riley of Frankfort, Chas. W. Dobbins of Louisville, for appellee.

NORTH CAROLINA

Foreign common carrier corporation, engaged exclusively in interstate commerce with respect to North Carolina, ruled subject to net income tax.


Plaintiff Delaware corporation sought to recover income taxes paid under protest to the State of North Carolina. It was not licensed to do intrastate business in North Carolina and had its principal office in Tennessee. It was a common carrier of freight for compensation by motor vehicles in interstate commerce only between the states of North Carolina, South Carolina, Virginia, Georgia and Tennessee, except that in Tennessee it also engaged in intrastate business. The company had no offices in North Carolina, except such as were incident to its motor freight terminals, which were necessary for its operations in the state, which were, and always had been exclusively interstate in character, no purely intrastate shipments of freight in North Carolina being handled. Plaintiff contended that it was not subject to the payment of the North Carolina income tax. The county court ruled that the taxes paid under protest were properly assessed and collected and that the plaintiff recover nothing from the defendant.

The North Carolina Supreme Court affirmed this judgment. The court, after an analysis of the pertinent statutes and applicable decisions of the Supreme Court of the United States, concluded: "In the light of the legislative intent, as well as the carefully restricted impact of our Income Tax Act as it is applicable to plaintiff, and by virtue of the authorities above set forth, we can only con-

clude, that the North Carolina statutes, under which the income taxes were imposed on plaintiff in the instant case, do not constitute a burden on interstate commerce, and do not violate the Commerce Clause of the Federal Constitution." Finding also no violation of "the due process of law" provision of the 14th amendment to the Federal Constitution and of "the law of the land" provision of Art. I, Sec. 17, of the North Carolina Constitution, the court reached the conclusion "that it is clearly manifest that the State of North Carolina has the right to collect the nondiscriminatory income taxes imposed on plaintiff, which taxes were imposed solely on that part of plaintiff's net income earned within the State of North Carolina in its interstate business, and reasonably attributable to its interstate business done or performed within the borders of this State."

ET & WNC Transportation Company v. Currie,* North Carolina Supreme Court, June 30, 1958. George B. Patton, Attorney General, and Basil L. Sherrill, Assistant Attorney General, for appellee. Harkins, Van Winkle, Walton & Buck and Cox, Epps, Powell & Weller, for appellant.

* The full text of this opinion is printed in the **State Tax Reporter**, North Carolina, page 10,189.



state legislation

Louisiana—Act 437 changes the date for filing the franchise tax return and paying the franchise tax, effective for the taxable periods beginning after December 31, 1958. The return and payment will be due on or before the 15th day of the fourth month following the month in which the tax accrues. The tax is to accrue on the first day of the calendar or fiscal year regularly used by the taxpayer in keeping its books. In the case of corporations operating on a calendar year basis, the return and payment will be due on May 15, 1959, and annually thereafter.

Massachusetts—Chapter 406 places a floor of \$25 under the existing minimum excise tax basis for domestic and foreign corporations, to apply to taxable years commencing on and after December 31, 1957.

Rhode Island—Senate Bill 303 contains provision that every foreign corporation as a condition precedent to carrying on business in the state shall, and by so carrying on business in the state does, consent that any process, including the process of garnishment, may be served upon the Director of the Department of Business Regulation as agent of the corporation in the event that no resident attorney can be found upon whom service can be made or in the event that the corporation has failed to designate a resident attorney.

Virginia—Senate Bill 144 effects various amendments to the Virginia Stock Corporation Act relating to such subjects as a change of corporate name, the contents of the annual report, the notice of stockholders' meetings, the contents of certificates of shares, the qualifications of the resident agent of a Virginia corporation as stated in the articles of incorporation and the qualification of a foreign corporation under an assumed name.

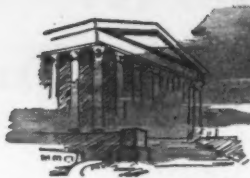
Discussions on Corporation Law

The New Look in Corporation Law. A symposium. Duke University School of Law, Durham, N. C., Law and Contemporary Problems, Volume 23, No. 2.

Foreign Corporations Doing Business in the Commonwealth of Puerto Rico, by Ricardo Francis, Law Review, University of Puerto Rico, March—April, 1957, page 347.

A Symposium on Florida Corporation Law, 12 University of Miami Law Review, Fall 1957, pp. 1-87.

Rights, Powers and Liabilities of Foreign Corporations in the Philippines, by Sulpicio Guevara, Philippine Law Journal, November 1957, page 633.



appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

GEORGIA. Docket No. 33. *Stockham Valves & Fittings, Inc. v. Williams*, 101 S. E. 2d 197. (The Corporation Journal, December 1957—January 1958, page 55.) Corporation income tax—interstate commerce. **Petition for writ of certiorari filed, February 3, 1958. Certiorari granted, March 17, 1958. (78 S. Ct. 670.)**

LOUISIANA. Docket No. 142. *Brown-Forman Distillers Corporation v. Collector of Revenue*, 101 So. 2d 70. (The Corporation Journal, August—September, 1958, page 134.) Income tax—income received by corporation engaged only in interstate commerce. **Petition for writ of certiorari filed, June 30, 1958.**

MINNESOTA. Docket No. 12. *Minnesota v. Northwestern States Portland Cement Co.*, 84 N. W. 2d 373. (The Corporation Journal, August—September, 1957, page 14.) Income tax—income received by corporation engaged only in interstate commerce. **Appeal filed, November 12, 1957. Probable jurisdiction noted, January 6, 1958.**

OHIO. Docket No. 9. *Youngstown Sheet & Tube Co. v. Bowers*, 166 O. S. 122, 140 N. E. 2d 313. (The Corporation Journal, February—March, 1958, page 72.) Property taxes — ores imported from foreign countries. **Appeal filed, October 30, 1957. Probable jurisdiction noted, January 6, 1958.**

* Data compiled from CCH U. S. Supreme Court Bulletin.



regulations and rulings

General — Where it is desired to effect, before the end of the calendar year, either the withdrawal of a foreign corporation from a state in which it had been authorized to do business or the dissolution of a domestic corporation, counsel have usually found that it is advisable to initiate the dissolution or withdrawal proceedings in most states as early as possible. Thus, if there are time-consuming requirements with which compliance must be had, ample provision may be made to satisfy such requirements before the end of the year. Frequently such requirements call for the preparation of income and other tax reports, the auditing of the corporate books, or the obtaining of certificates from various state departments that all taxes due the state have been paid. Inasmuch as, in some instances, a month or more may be consumed in effecting such compliance, it is advisable to investigate and institute dissolution or withdrawal proceedings, wherever possible, well in advance of the close of the year.

New Jersey — A corporation doing business in New Jersey and in Philadelphia may not withhold the Philadelphia income tax from wages paid in New Jersey, for work done in that state, to residents of Philadelphia. (Opinion of the Attorney General of New Jersey, State Tax Reporter, Pennsylvania, ¶ 200-801.)

New York — The organization tax of 1/20 of 1% is a single tax computed on the aggregate value of all shares having a par value and is not a multiple tax on each individual share with par value. The question arose in connection with shares with a par value which included a fraction of a cent. (Opinion of the Attorney General, State Tax Reporter, New York, ¶ 98-087.)

North Carolina — Personal property owned on January 1 should be listed by the owner, and taxes are payable on the property even if it is disposed of on the following day. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 200-402.)

Wisconsin — Pursuant to the laws of Wisconsin and Indiana and to an agreement with the Indiana and Wisconsin authorities thereunder, Wisconsin will not seek to tax wages, salaries and commissions earned in Wisconsin by individuals who are residents of Indiana. Indiana is extending the same exemptions to Wisconsin residents receiving wages, salaries and commissions in Indiana. (Ruling of Department of Taxation, State Tax Reporter, Wisconsin, ¶ 10-202.67).

P. L. 554 (H. R. 11102), amending Section 1332 of Title 28 of the United States Code, in addition to increasing from \$3,000 to \$10,000, exclusive of interest and costs, the amount in controversy required to give the federal district courts original jurisdiction of civil actions involving diversity of citizenship, provides that, for the purpose of this section, "a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."



some important matters

For October and November

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

- Alabama** — Quarterly Withholding Tax due on or before October 31.
- Arizona** — Quarterly Withholding Tax due on or before October 31.
- California** — Quarterly Retail Sales Tax due on or before October 31.
- Colorado** — Quarterly Withholding Tax due on or before October 31.
- Connecticut** — Quarterly Retail Sales Tax due on or before October 31.
- Delaware** — Withholding at source Returns due October 31.—Domestic and Foreign Corporations paying compensation to Delaware employees.
- Georgia** — Certified Statement for Registration due on or before November 1.
- Indiana** — Quarterly Gross Income Tax and Withholding Tax due on or before October 31.
- Iowa** — Quarterly Retail Sales Tax due on or before October 31.
- Kentucky** — Quarterly Withholding Tax due on or before October 31.
- Maryland** — Quarterly Withholding Tax due on or before October 31.
- Missouri** — Quarterly Retail Sales Tax due on or before October 15.
- Nevada** — Quarterly Retail Sales Tax due on or before October 31.
- New York** — Second Instalment of Franchise (Income) Tax of Business Corporations due on or before December 1.
- North Dakota** — Quarterly Retail Sales Tax due on or before October 31.
- Oregon** — Quarterly Withholding Tax due on or before October 31.
Report of Abandoned Property due on or before November 1.
- Pennsylvania** — Quarterly Selective Sales Tax due October 31.
- Rhode Island** — Semi-Annual Report to Division of Industrial Inspection during October.
- South Dakota** — Quarterly Retail Sales Tax due on or before October 15.
- Utah** — Quarterly Retail Sales Tax and Withholding Tax due on or before October 30.
- Vermont** — Quarterly Withholding Tax due on or before October 31.
- West Virginia** — Quarterly Business (Gross Sales) Tax due October 30.





supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Heads I Win, Tails You Lose. An explanation of the possible consequences to the corporation which takes a chance [?] on doing business in states outside the state of its incorporation without complying with governing laws, rulings and regulations.

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A Pretty Penny . . . Gone! What it can cost a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

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